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Wisconsin State Senator • 4th District

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Testimony of Senator Lena C. Taylor

Senate Bill 464: Restraining Order Improvement Act

Committee on the Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing

February 4, 2009

Honorable Members of the Committee,

Thank you for holding a hearing on Senate Bill 464, the Restraining Order Improvement Act. Senate Bill 464 will ensure that Wisconsin's most vulnerable citizens, victims of abuse, including the elderly, children and victims of domestic violence are protected from imminent harm. It is imperative that Wisconsin has a responsive court system and consistent set of protective statutes for those that are least able to protect themselves.

Domestic violence homicides in Wisconsin are at a 10-year high. There were 36 domestic violence homicides in 2008, but last year domestic violence incidents resulted in 59 deaths, despite the fact that my districts like Milwaukee saw homicides at a 20-year low and violent crime is down 18 percent. There is more that Wisconsin can do to protect its most vulnerable citizens. Wisconsin's restraining order procedures need to account for the emergency needs of victims by erasing the ambiguities and inconsistencies in the current temporary restraining order and injunction statutes.

Currently, there are a number of inconsistencies between the harassment and domestic abuse restraining order statutes that perplex victims, advocates and court officials alike. The bill streamlines the process for the judicial review of a petition and for the procedures for acquiring a temporary restraining order for domestic abuse, child abuse and elder abuse. For instance, a circuit court will be disallowed from entering an order that conflicts with a temporary restraining order or injunction for domestic violence, child abuse or elder abuse.

Courts have the responsibility to provide persons contacting the court clerk's office detailed information about the filing process. The bill requires that courts provide information on what and who qualifies for the various types of temporary restraining orders and injunctions.

Timely access to restraining orders and information can mean the difference between life and death for victims of abuse. Wisconsin must require courts to review and rule on a petition two business hours after it is submitted. Other safety measures are also needed in order to address victim confidentiality and expanding the rights of teen victims.

To ensure that Wisconsin has a system that values prompt justice and protection for our most vulnerable citizens we must have a responsive court system. The courts must treat certain restraining orders as emergencies, so our most vulnerable citizens are protected from imminent domestic abuse. Providing our state's citizens with legal protection from known perpetrators of abuse and domestic violence is a basic, human right. This right is something that our court system especially has to be responsive to as a gate-keeping institution to police protection.

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Committee on Judiciary, Corrections, Insurance,
Campaign Finance Reform, and Housing (Chair)
Committee on Justice Reinvestment
Initiative Oversight (Chair)

Joint Committee on Finance
Joint Committee for Review of Criminal Penalties (Co-Chair)
Committee on Strengthening Wisconsin Families (Co-Chair)
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ANN HRAYCHUCK

STATE REPRESENTATIVE

February 4, 2010

Testimony of Rep. Ann Hraychuck
Before the Members of the Senate Committee on Judiciary, Corrections,
Insurance, Campaign Finance Reform and Housing
Regarding SB 464 – The WI Restraining Order Improvement Act

In the early 1980s I received an anonymous phone call at the Sheriff's Department that a 38 year old woman named Linda had just been admitted to the Amery Hospital in serious condition from injuries inflicted on her by her husband, John, however, Linda did not want to talk to a police officer.

I had previously been to the hospital many times to interview Linda under similar circumstances, but Linda always refused to tell me what had happened to her because she loved her husband and didn't want him to go to jail.

When I arrived at the hospital, this time, I would not have recognized Linda. Her eyes were swollen shut, her entire face was swollen and bruised, some of her teeth were knocked out, and she had a fractured jaw. I asked Linda to do me a huge favor.

I asked Linda to help me solve a murder case....her murder. I told her that one of these times she was not going to survive John's beatings, and I wanted to have documentation of what he has been doing to her for the last 10 years, telling her that she will be dead so it won't matter if he goes to jail.

She proceeded to tell me that John had beaten her with an axe handle because she hadn't done the dishes fast enough. She allowed me to take photos of her bruised and battered body, but insisted that she would not testify and did not want him to go to jail. (This was before Mandatory Arrest in domestic violence cases.)

Sure enough, two months later, I was again called to the Amery Hospital. This time Linda was in surgery and barely survived. She was willing to testify this time – realizing that this was very close to being a homicide investigation. John finally went to prison.

As I was preparing to testify today, I couldn't decide which true horror story I should tell you about: Linda's story, or Yvonne Strenke's story... who wasn't as lucky as Linda....Yvonne was murdered on Thanksgiving Day, 1989, by her ex-husband, as she came to the house to pick up their three little girls....or if I should tell you about five year old Mikayla whose daddy shot her

in the head and then turned the gun on himself...this was to punish Mikayla's mommy. Mission accomplished.

The true life stories of domestic violence cases are endless. They know no socio-economic boundaries. The dynamic of power and control over victims is the most interesting and challenging thing that I learned about as a Sensitive Crimes Investigator.

Having spent over 25 years with victims and their families, I am very proud that the State of Wisconsin has recognized the importance of enacting state laws that protect the vulnerable victims of this heinous crime. It is imperative that we continue to stay on the cutting edge of domestic violence legislation.

Restraining orders are tools that can help victims survive domestic violence, although there are all too many times that lives are still lost. I am very grateful to the WI Coalition of Domestic Violence for their undying commitment to help victims and for their continuing assistance in educating us as legislators on how we can improve our laws. That is what we are doing here today, listening and learning about what we can do to improve the Restraining Statutes. You will hear from their Policy Coordinator, Tony Gibart, about the specifics of this legislation.

A special thank you to Senator Taylor and Representative Parisi for their work on SB 464. From all of the victims, past and future, I thank you Mr. Chair and this committee for your commitment to homicide prevention.

Testimony



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To: Members of the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing

From: Tony Gibart, Policy Coordinator, Wisconsin Coalition Against Domestic Violence

Date: February 4, 2009

Re: SB 464- The Wisconsin Restraining Order Improvement Act

Chairperson Taylor and Members of the Committee, thank you for the opportunity to provide testimony on Senate Bill 464-the Wisconsin Restraining Order Improvement Act. My name is Tony Gibart, and I represent the Wisconsin Coalition Against Domestic Violence. WCADV is the statewide voice for domestic violence survivors and the over 60 victim service programs in Wisconsin that serve them everyday. WCADV fully supports SB 464 and thanks Senator Taylor and Representative Hraychuck for introducing this set of improvements to Wisconsin's restraining order laws.

SB 464 will make restraining order laws more effective so victims are empowered to seek legal protection.

The anti-violence against women movement has advocated an understanding that domestic abuse is at a fundamental level, the exercise of power and control over an intimate partner or family member. When violence invades the home, victims often feel as if they are left without a refuge and have no choice but to live with terror and pain. To counteract the physical and psychological effects of abuse, our movement has striven to give victims options for safety and healing so that they feel empowered to live free from abuse.

In theory, restraining orders are an empowering option through which a victim can choose on her own to invoke the protection of the law and restore her basic right to be left in peace. In reality, victims' perception of the restraining order process is more mixed. While the restraining order statutes put the victim in the driver's seat on the road to ending a violent relationship, some procedural requirements and technicalities can leave victims lost and helpless, at a time when they are likely in life or death situations. Senate Bill 464 addresses a number of unnecessary inconsistencies and technicalities in the harassment and domestic abuse restraining order statutes so that victims are not discouraged from seeking, or denied, the protection they deserve.

WCADV's member organizations provide legal advocates to victims in all of Wisconsin's counties. Legal advocates counsel survivors on the type of protections available and assist survivors through the legal system. Many of the provisions of the bill were suggested by legal advocates who have seen firsthand procedural pitfalls and unwarranted barriers, which have led victims to experience injustice and increased risk. Other provisions are the result of the Statewide Restraining Order Assessment Report undertaken by the Office of Justice Assistance last year. All told, the bill represents a comprehensive package of

improvements that will make the restraining order process less confusing and more consistent and effective for all parties.

Preventing Teen Dating Violence: ensuring minors can seek harassment restraining orders

One of the main provisions of SB 464 clarifies that minors can seek harassment restraining orders. This is especially critical for teens who are being harassed, intimidated or abused by a current or former dating partner.

The current harassment restraining order statute specifies that any individual may seek a harassment restraining order. The term individual is not further defined. Many courts interpret that term to include minors. Other courts do not permit a minor to seek a harassment order unless the action is brought by a parent.

This requirement means that many teens do not get legal protection. Teen victims tend to not report abuse out of fear and embarrassment. One in three teens experiences abuse in dating relationships, and two-thirds of abused teens never come forward to a parent or adult. In addition, the reality is that too many teens do not have loving, supportive parents. These teen victims have legitimate safety reasons for not telling a parent about dating violence. One study has shown that experiencing violence as child at home is associated with experiencing dating violence as a teen.

SB 464 will ensure that teen victims have access to legal protection, especially when the courts may be one of the only places they can turn. Importantly, the bill directs the court to appoint a guardian *ad litem* for minors seeking protection whenever the court deems it appropriate to do so.

Modernizing the Harassment Restraining Order Statute: bringing consistency to law and procedure.

For a variety of reasons a victim of what we would consider intimate partner violence might seek a harassment restraining order, rather than a domestic abuse restraining order. In some cases, the abuser may have been physically violent some time ago, but is now using an obsessive pattern of harassment to control the victim. While technically a victim should be able to get a domestic abuse restraining order for the past incidents, her chances of success are greater if she bases her petition on the more recent harassment. In other cases, the perpetrator of domestic abuse may dispute that he or she had an intimate relationship with the victim. In these cases, the victim might choose to seek a harassment order so that she does not have to prove that a relationship existed.

SB 464 cleans up a number of inconsistencies between the domestic abuse and harassment restraining order statutes. These current inconsistencies confuse and stymie victims, advocates and often court officials. SB 464 will reflect the reality that in the lives of survivors, the circumstances that give rise to harassment and domestic abuse restraining orders are intertwined and often indistinguishable.

The bill provides consistency in the following ways:

- Allows a victim, whose written petition for a temporary restraining order is denied, the opportunity to present evidence at a permanent injunction hearing. This is the same basic two-part procedure that is used for domestic abuse restraining orders.
- Directs the court, in a harassment restraining order proceeding, to order the sheriff to serve the respondent and place the petitioner in possession of his or her home, if the petitioner requests such assistance. Current law directs the sheriff to provide these services to domestic abuse petitioners.

- Allows a harassment restraining order petitioner to serve the respondent by publication if the respondent is avoiding service. Petitioners currently have this option under the domestic abuse restraining order statute.
- Prohibits the court from denying harassment restraining orders because of the existence of a pending action or other orders. This is the same provision that currently applies to domestic abuse restraining order petitions.

In many instances, court officials are not aware that the harassment and domestic abuse statutes contain these procedural inconsistencies, and many officials already use the same procedures for domestic abuse and harassment petitions. As such, the practical effect of these provisions of the bill will be to simply make the statute reflective of what is already happening on the ground.

The bill also creates procedures to ensure that petitioners enter into stipulations to convert a domestic abuse restraining order petition to a harassment restraining order petition knowingly and voluntarily. Domestic abuse petitioners are many times asked to stipulate to conversions to harassment restraining orders by respondents' attorneys or judges. The circumstances of these requests often put petitioners at a disadvantage. Currently, there is no uniform process for converting a domestic abuse petition to a harassment petition. Without these provisions, petitioners are susceptible to unknowingly sacrificing their right to seek the protections only available under domestic abuse restraining orders.

Ensuring Urgent Requests for Protection are Heard in a Timely Fashion

The current restraining order statutes are clear: victims have the right to emergency protection on an expedited basis. The law acknowledges that many victims are in urgent, life-threatening situations and that the legal system should respond accordingly. Senate Bill 464 takes a number of steps so that victims do not experience gaps in our laws as gaps in protection. Victims should not be forced to endure indeterminate delays that leave them wondering when they can be safe.

The bill ensures victims timely access to protection in the following ways:

- Clarifies the procedures and timeframe for requesting circuit court judge review of court commissioners' rulings (called "de novo review") on matters pertaining to domestic abuse, child abuse, individual at risk and harassment restraining orders. While current law generally provides for de novo review of commissioner rulings, some counties have not adopted policies and procedures for review of restraining order petitions. The bill requires that review occur within 15 business days. This timeframe is consistent with the recommendations of judges and court commissioners and greater than the amount of time currently allowed in most counties that have specific policies in place.
- Explicitly prohibits the respondent from requesting that a restraining order hearing be delayed without the petitioner's consent. Because of the time-sensitive nature of the restraining order hearing, this protection is already a feature of current law. However, some judges postpone the hearing solely upon the motion of the respondent. Petitioners who come to the hearing prepared to testify and face their abusers should not be forced to endure delay.

As you can see, SB 464 represents a comprehensive package of improvements that will make Wisconsin's restraining order statutes more effective for victims. When victims are better able to utilize legal protection, they are more empowered to start new lives free of abuse, and ultimately victims and our communities are safer. Thank you, and I urge the committee to recommend passage of Senate Bill 464.



Shirley S. Abrahamson
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Testimony
of
Nancy M. Rottier
on behalf of the
Director of State Courts

Senate Bill 464
Regarding Temporary Restraining Orders and Injunctions

Senate Committee on Judiciary, Corrections, Insurance,
Campaign Finance Reform and Housing
February 4, 2010

Senator Taylor and members of the Committee, my name is Nancy Rottier. I am the Legislative Liaison for the Director of State Courts. The Legislative Committee of the Judicial Conference will be discussing Senate Bill 464 at its meeting next week; at this time, the committee has not taken a position on the bill. Once the Legislative Committee takes a position, we will communicate it to the committee.

The court system has enjoyed a good working relationship with the domestic violence advocacy community. Advocates have worked on several committees to develop better court practices in the area of domestic violence, temporary restraining orders (TROs) and injunctions. We appreciate their willingness to work with us.

In studying SB 464 and the changes it proposes in the area of TROs and injunctions, we have raised some questions and identified some concerns. These are the items we have communicated to and discussed with the Wisconsin Coalition Against Domestic Violence:

- 1) The de novo hearing timeline of section 2 of the bill should probably be reversed, that is, a shorter time should be provided for a party to request a de novo hearing and a longer time should be provided to hold the hearing. Section 2 also uses the concept of "working days" that is not used in other timelines in civil procedure. We think the method of counting days for these

purposes should be consistent with the civil procedure code, particularly because s. 757.69 (8), Stats., involves all types of cases, not just TROs and injunctions.

2) Section 3 (and sections 22 and 23) raises the important point about potential conflicts in court orders issued in family court cases and in injunction cases. We have had some concern raised whether the language of section 3 is clear enough on which orders may not be entered by the family court judge and how conflicts are to be resolved. At the same time, we want to commend the authors for including section 9 (and other section) that require a petitioner to identify other pending court actions. This should make it easier to identify potential conflicts, particularly if there are court actions in other counties besides the county where the TRO or injunction action is being brought.

3) In sections 5, 12, 14 and 16 of the bill, the added language about verifying the proof of service seems confusing, and we have discussed some alternative wording. From our discussions, it appears the intent is to help the petitioner by reminding him or her of the need to verify proof of service.

4) Section 28 of the bill is problematic for a few reasons. The requirement that the court review, rule on and return a petition "within 2 normal business hours" appears unworkable to us. It is important to know that, based on a survey of clerks of circuit court, the majority of counties are already performing this function in a 2-hour timeframe. In multi-judge counties, the courts typically designate an official to handle these petitions in this short timeframe. But in one-judge counties, particularly in areas where the surrounding counties are also one-judge counties, this timeframe may be impossible to meet.

The first subsection seems to require the Director of State Courts to create documents for each county about the procedures in TROs and injunctions. We are concerned whether this subsection requires unnecessary work and whether including this requirement in the statutes will be flexible enough for future needs. At this time, many clerks of circuit court make available a helpful document called "Restraining Orders in Wisconsin," prepared by the Wisconsin Coalition Against Domestic Violence.

In addition, in a few areas, we have suggested some wording changes that may make compliance easier for the circuit courts and the clerks of court.

Again, we are grateful that advocates for victims of domestic violence have been willing to answer questions and discuss concerns with us. More work is needed, and we are very willing to work with them on this topic.

I would be happy to answer any questions. Thank you.